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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
KIM, CHONG HWA	
ART UNIT	**PAPER NUMBER**
3682	

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/005,164	OONO ET AL.	
	Examiner	Art Unit	
	Chong H. Kim	3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8-16,18 and 20-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6,8-16,18 and 20-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12/7/01 & 4/30/03* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The Examiner acknowledges the applicant's Amendment filed Aug 31, 2004 in response to the Office action made on Jul 7, 2004 and canceling of claims 17 and 19.

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the outwardly swollen rigidity supplementing portion having a cylindrically-shaped portion as recited in claims 22, 23, and 26; and the semi-circular shape having a linear portion as recited in claims 24 and 25 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified

and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 22-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly added claims 22, 23, and 26 recite the limitation wherein the outwardly swollen rigidity supplementing portion comprising "a cylindrically-shaped portion". The "cylindrically-shaped portion" is considered a new matter since neither specification nor drawings as originally filed describes the rigidity supplementing portion having a "cylindrically-shaped portion". The word "cylindrical" is defined by Merriam Webster's Collegiate Dictionary, 10th Edition as being related to the form or properties of a "surface traced by a straight line moving parallel to a fixed straight line and intersecting a fixed planar closed curve".

As to the matter of newly added claims 24 and 25, neither the specification nor drawings as originally filed describes the semi-circular shape of the brittle portion comprising a linear portion. The drawing as shown in Fig. 2 does not show any portion of the semi-circular shape 5 having a straight line or a linear portion.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 5, 12-15, 18, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Nawata et al., U.S. Patent 6,112,615.

Nawata et al. shows, in Figs. 1 and 4, a pedal bracket structure comprising;

a pedal bracket 30 fixed at a front end portion to a toe board 16;

a pedal lever 24 rotatably supported in a vicinity of a rear end portion of the pedal bracket via a pedal lever pivot 68;

wherein the pedal bracket comprises a rigidity supplementing portion in the vicinity of the front end portion 34 of the pedal bracket and a brittle portion 32 contiguous to and at a rear side of the rigidity supplementing portion;

wherein the brittle portion is ahead of the pedal lever pivot in a longitudinal direction of the pedal bracket;

a rigidity increasing member 36 between the pedal lever pivot and a vehicle body, and which is located at the rear of the pedal bracket;

wherein the outwardly swollen rigidity supplementing portion comprises a swollen bead;

wherein the outwardly swollen rigidity supplementing portion comprises a curved rib;

wherein the pedal bracket further comprises a rigidity supplementing plate (the flange portion where the fasteners 46 are attached) attached to the outwardly swollen rigidity supplementing portion;

wherein the brittle portion comprises a thin portion; and

wherein the outwardly swollen rigidity supplementing portion comprises a cylindrically-shaped portion (in this case, the Examiner is interpreting the "cylindrically-shaped portion" as being any part of a cylinder, whether it be a line or surface; therefore, the arc shaped line that is formed at the corner of the flange and the bracket 30 can be construed to be a cylindrically-shaped portion).

6. Claims 1-3, 5, 12-14, 18, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Notake et al., U.S. Patent 6,006,626.

Notake et al. shows, in Fig. 21, a pedal bracket structure comprising;

a pedal bracket 100 fixed at a front end portion to a toe board 16;

a pedal lever 42 rotatably supported in a vicinity of a rear end portion of the pedal bracket via a pedal lever pivot 50;

wherein the pedal bracket comprises a rigidity supplementing portion 108 in the vicinity of the front end portion 110 of the pedal bracket and a brittle portion 148 at a rear side of the rigidity supplementing portion;

wherein the brittle portion is ahead of the pedal lever pivot in a longitudinal direction of the pedal bracket;

a rigidity increasing member 140 between the pedal lever pivot and a vehicle body, and which is located at the rear of the pedal bracket;

wherein the outwardly swollen rigidity supplementing portion comprises a swollen bead;

wherein the outwardly swollen rigidity supplementing portion comprises a curved rib;

wherein the brittle portion comprises a thin portion; and

wherein the outwardly swollen rigidity supplementing portion comprises a cylindrically-shaped portion (in this case, the Examiner is interpreting the "cylindrically-shaped portion" as being any part/portion of a cylinder, whether it be a line or surface; therefore, the bead shaped protrusion can be construed to be a cylindrically-shaped portion).

7. Claims 21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Nawata et al., U.S. Patent 6,112,615.

Nawata et al. shows, in Fig. 4, a pedal bracket 30 comprising;

an outwardly swollen rigidity supplementing portion formed toward a front end portion 34 of the pedal bracket;

a brittle portion 32 contiguous to and at a rear side of the outwardly swollen rigidity supplementing portion;

wherein the outwardly swollen rigidity supplementing portion comprises a cylindrically-shaped portion (in this case, the Examiner is interpreting the "cylindrically-shaped portion" as being any part/portion of a cylinder, whether it be a line or surface; therefore, the arc shaped line that is formed at the corner of the flange and the bracket 30 can be construed to be a cylindrically-shaped portion); and

wherein the rear side of the cylindrically-shaped portion is defined by the brittle portion.

8. Claims 21 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Notake et al., U.S. Patent 6,006,626.

Notake et al. shows, in Fig. 21, a pedal bracket 100 comprising;

an outwardly swollen rigidity supplementing portion 108 formed toward a front end portion 110 of the pedal bracket;

a brittle portion 148 contiguous to and at a rear side of the outwardly swollen rigidity supplementing portion; and

wherein the outwardly swollen rigidity supplementing portion comprises a cylindrically-shaped portion (in this case, the Examiner is interpreting the "cylindrically-shaped portion" as being any part/portion of a cylinder, whether it be a line or surface; therefore, the bead shaped protrusion can be construed to be a cylindrically-shaped portion).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 8, 9, 16, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nawata et al., U.S. Patent 6,112,615.

Nawata et al. shows, as discussed above in the rejection of claims 1 and 12, the pedal bracket structure comprising the brittle portion having a hole 40, wherein the hole comprises a curved portion (at the corners of the hole) and a linear portion (between the two corners located toward the front of the car) formed at a front side of the curved portion, and the rear side of the rigidity supplementing portion is defined by the linear portion of the hole, but fails to show the hole being a semi-circular shape.

It would have been obvious to modify the triangular shaped hole of Nawata et al. with a semi-circular shaped hole, since applicant has not disclosed the criticality of the semi-circular shaped hole has on the brittle portion and it appears that the brittle portion would perform equally well with a hole with any reasonable shape.

11. Claims 1-6, 10-14, 18, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Notake et al., U.S. Patent 6,006,626 in view of Kato, JP 9-254821.

Notake et al. shows, in Fig. 21, a pedal bracket structure comprising;

a pedal bracket 100 fixed at a front end portion to a toe board 16;

a pedal lever 42 rotatably supported in a vicinity of a rear end portion of the pedal bracket via a pedal lever pivot 50;

wherein the pedal bracket comprises a rigidity supplementing portion 108 in the vicinity of the front end portion 110 of the pedal bracket and a brittle portion 148 at a rear side of the rigidity supplementing portion;

wherein the brittle portion is ahead of the pedal lever pivot in a longitudinal direction of the pedal bracket;

a rigidity increasing member 140 between the pedal lever pivot and a vehicle body, and which is located at the rear of the pedal bracket;

wherein the outwardly swollen rigidity supplementing portion comprises a swollen bead;

wherein the outwardly swollen rigidity supplementing portion comprises a curved rib;

wherein the brittle portion comprises a thin portion; and

wherein the outwardly swollen rigidity supplementing portion comprises a cylindrically-shaped portion (in this case, the Examiner is interpreting the "cylindrically-shaped portion" as being any part/portion of a cylinder, whether it be a line or surface; therefore, the bead shaped protrusion can be construed to be a cylindrically-shaped portion).

but fails to show a switch bracket having a saddle shape attached to the pedal bracket with a rigidity supplementing bracket.

Kato shows, in Figs. 1-21, a pedal bracket structure comprising; a rigidity increasing member (the upper portion of the bracket) between the pedal lever pivot 28 and a vehicle body, and which is located at the rear of the pedal bracket; wherein the rigidity increasing member comprising a switch bracket 32 fastened to the pedal bracket together with the pedal lever pivot and a rigidity supplementing bracket 38 disposed between the switch bracket and the vehicle body, wherein the rigidity supplementing bracket is aligned with and fixed to the switch bracket; wherein the switch bracket is saddle shaped;

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the switch bracket as taught by Kato in the pedal bracket structure of Notake et al. in order to provide a safer driving condition by installing a stop lamp switch to turn on the brake light in case of a front collision.

12. Claims 1-6, 8-16, 18, 20, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nawata et al., U.S. Patent 6,112,615 in view of Kato, JP 9-254821.

Nawata et al. shows, in Figs. 1 and 4, a pedal bracket structure comprising;

a pedal bracket 30 fixed at a front end portion to a toe board 16;

a pedal lever 24 rotatably supported in a vicinity of a rear end portion of the pedal bracket via a pedal lever pivot 68;

wherein the pedal bracket comprises a rigidity supplementing portion in the vicinity of the front end portion 34 of the pedal bracket and a brittle portion 32 contiguous to and at a rear side of the rigidity supplementing portion;

wherein the brittle portion is ahead of the pedal lever pivot in a longitudinal direction of the pedal bracket;

a rigidity increasing member 36 between the pedal lever pivot and a vehicle body, and which is located at the rear of the pedal bracket;

wherein the outwardly swollen rigidity supplementing portion comprises a swollen bead;

wherein the outwardly swollen rigidity supplementing portion comprises a curved rib;

wherein the pedal bracket further comprises a rigidity supplementing plate (the flange portion where the fasteners 46 are attached) attached to the outwardly swollen rigidity supplementing portion;

wherein the brittle portion comprises a thin portion; and

wherein the outwardly swollen rigidity supplementing portion comprises a cylindrically-shaped portion (in this case, the Examiner is interpreting the "cylindrically-shaped portion" as

being any part of a cylinder, whether it be a line or surface; therefore, the arc shaped line that is formed at the corner of the flange and the bracket 30 can be construed to be a cylindrically-shaped portion);

but fails to show a switch bracket having a saddle shape attached to the pedal bracket with a rigidity supplementing bracket; and the hole being a semi-circular shape.

Kato shows, in Figs. 1-21, a pedal bracket structure comprising; a rigidity increasing member (the upper portion of the bracket) between the pedal lever pivot 28 and a vehicle body, and which is located at the rear of the pedal bracket; wherein the rigidity increasing member comprising a switch bracket 32 fastened to the pedal bracket together with the pedal lever pivot and a rigidity supplementing bracket 38 disposed between the switch bracket and the vehicle body, wherein the rigidity supplementing bracket is aligned with and fixed to the switch bracket; wherein the switch bracket is saddle shaped;

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the switch bracket as taught by Kato in the pedal bracket structure of Nawata et al. in order to provide a safer driving condition by installing a stop lamp switch to turn on the brake light in case of a front collision.

As to the matter of hole being a semi-circular shape, Nawata et al. shows, as discussed above in the rejection of claims 1 and 12, the pedal bracket structure comprising the brittle portion having a hole 40, wherein the hole comprises a curved portion (at the corners of the hole) and a linear portion (between the two corners located toward the front of the car) formed at a front side of the curved portion, and the rear side of the rigidity supplementing portion is defined by the linear portion of the hole.

It would have been obvious to modify the triangular shaped hole of Nawata et al. with a semi-circular shaped hole, since applicant has not disclosed the criticality of the semi-circular shaped hole has on the brittle portion and it appears that the brittle portion would perform equally well with a hole with any reasonable shape.

Response to Arguments

13. In response to the applicant's argument that Nawata et al. fails to show the brittle portion being contiguous to the outwardly swollen rigidity supplementing portion, it is the Examiner's view that Nawata et al. shows such configuration. It appears that the applicant describes the hole 5 as the brittle portion, in the Specification on page 12, 2nd paragraph. (Note: It is noted that the hole is not the brittle portion and the brittle portion is not the hole. The hole may be a part of the brittle portion.) In a normal engineering practice, a "brittle portion" assumes a some sort of three dimensional element having a mass that would be subject to "crumble", "buckle" or "bend" under a force. A hole does not have a mass or is not a three dimensional element. And certainly would not "crumble", "buckle" or "bend" under a force. The main purpose of the hole is to reduce the resistant force of an element so that the "crumbling", "buckling", or "bending" of the element becomes easier. Also, the specification is silent as to exactly where that brittle portion is located and what are the boundaries that would define the brittle portion area in the bracket 1. The only description in the specification regarding the locating of the brittle portion is on page 12, 2nd paragraph where it states; "semi-circular hole portions (brittle portions) 5, 5 are formed contiguously with rear ends of the swelling beads (rigidity supplementing portions) 4, 4 as the brittle portion." Nevertheless, the Examiner assumes that the brittle portion is not a hole but a

portion of the side plate 1A that would buckle during an impact, wherever that is. This assumption is gleaned from the recitation in claim 9 "wherein the brittle portion has a semi-circular shaped hole formed therein." Now, the question is what does it mean by "formed contiguously"? Clearly the specification fails to define exactly what it means by "contiguously". The word contiguous is defined, in Merriam Webster's Collegiate Dictionary, 10th Edition, as 1) "being in actual contact: touching along a boundary or at a point"; 2) "ADJACENT"; 3) "next or near in time or sequence"; and 4) "touching or connected throughout in an unbroken sequence". Looking at the Drawings, one of ordinary skill in the art may apply definition No. 1 when the hole 5 is formed contiguously with the rigidity portion 4. However, one can not apply definition No. 1 to the brittle portion, because the definition No. 1 requires the actual boundary or point where the brittle portion shares with the rigidity portion in which the specification fails to define. At best, it can be construed that the brittle portion is contiguous (adjacent) to the rigidity portion, using definition No. 2.

Going back to Nawata et al., it is well established that the claims must be given their broadest reasonable interpretation consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000); and MPEP 2111. From the interpretation consistent with the specification, it can be construed that, if the hole 40 of Nawata et al. can be interpreted as being the brittle portion, as the applicant has described, then certainly, the hole 40 is formed contiguously (touching along a boundary or at a point or being adjacent) with the rigidity portion as shown in Fig. 4. The rigidity portion of Nawata et al. can be construed to be the entire width from the rigidity supplementing plate to the edge of the hole 40. It can be reasonably interpreted that the swollen portion of the rigidity portion is gradually reduced

towards the edge of the hole 40 in its swollenness, thus including the edge of the hole 40 to be a part of the rigidity portion. Also, the brittle portion 32 can be interpreted as being formed contiguously (adjacent) with the rigidity portion.

As to the matter of Nawata et al. reference failing to accurately control the deformation of the pedal bracket at the triangular hole, it is the examiner's view that Nawata et al. reference reasonably control deformation of the pedal bracket at the triangular hole by ensuring that the rigidity supplementing portion is contiguous to a brittle portion. In other words, the rigidity portion disclosed by Nawata et al., in most cases would not deform under a certain degree of impact. Nevertheless, it is not a question of how well the prior art may function relative to the applicant's invention, but a question of whether "the reference teaches every claimed element of the article." MPEP 2121.01(I).

14. In response to the applicant's argument that Notake et al. fails to show the outwardly swollen rigidity supplementing portion which is formed in the front end portion of the bracket, it is noted that claims 1, 12, and 21 does not recite that the rigidity portion is formed in the front end portion of the bracket. Rather, claim 1 recites that the rigidity portion is "in the **vicinity** of said front end of said pedal bracket"; and claims 12 and 21 recite that the rigidity portion is "formed **toward** front end portion of said pedal bracket". It appears that Notake et al. shows the rigidity portion 108 either in the vicinity of or formed toward the front end portion of the pedal bracket. Also it is noted that the brittle portion of Notake et al. is never interpreted as being the hole 106 as the applicant suggests. Rather, the brittle portion is the element 148 that is above and behind the rigidity portion 108.

15. In response to the applicant's argument that the slide bracket 148 of Notake et al. does not correspond to the brittle portion as recited in the claims, it is the Examiner's position that the so called slide bracket 148 can be construed to be a brittle portion. Notake et al. describes in column 17, lines 13-20, that the slide bracket 148 is spot welded to the slide guide 140 and such joined state is canceled by a load on the region of joining. This description at least implies that the slide bracket 148 is in a brittle connection with the slide guide 140. Therefore, it can be construed that the slide bracket 148 is the brittle portion.

16. In response to the applicant's argument that the brittle portion of Notake et al. is not contiguous to the rigidity portion, as discussed above in paragraph 15, the word "contiguous" has been interpreted as being "adjacent". Therefore, it can be construed that the brittle portion 148 of Notake et al. is contiguous to the outwardly swollen rigidity supplementing portion 108.

17. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation can be found in the knowledge generally available to one of ordinary skill in the art.

18. Applicant's arguments with respect to the Kato reference in view of the Notake et al. reference have been considered but are moot in view of the new ground(s) of rejection.

19. Applicant's arguments with respect to the Kato reference in view of the Nawata et al. reference have been considered but are moot in view of the new ground(s) of rejection.

20. In response to the applicant's argument that there is no prima facie case of obviousness provided, it is the Examiner's position that prima facie case of obviousness has been established. The motivation to change the shape of the hole can be found generally available to one of ordinary skill in the art and it is a common sense to change the shape of the hole depending on the wishes of the designer since such different shapes do not impinge on the integrity of the bracket that responds to an impact and the specification fails to show the persuasive evidence that the particular configuration of the claimed hole was significant. Therefore, changing the shape of the hole is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

21. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chong H. Kim whose telephone number is (703) 305-0922. The examiner can normally be reached on Tuesday - Friday; 8:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Bucci can be reached on (703) 308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

chk
October 13, 2004

CHONG H. KIM
PRIMARY EXAMINER